

(c) With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one (1) week, or one (1) reporting period, late. If a claimant files more than one (1) reporting period late, an initial claim must be used to begin a claim series, and no continued claim for a past period shall be accepted.

(d) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state. (*Department of Workforce Development; 646 IAC 3-11-5; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1940; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-10-5) to the Department of Workforce Development (646 IAC 3-11-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

**646 IAC 3-11-6 Determination of claims**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 6. (a) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(b) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim. (*Department of Workforce Development; 646 IAC 3-11-6; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1940; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-10-6) to the Department of Workforce Development (646 IAC 3-11-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.

**646 IAC 3-11-7 Appellate procedure**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 7. (a) Appeals shall be conducted in accordance with the interstate agreement.

(b) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state. (*Department of Workforce Development; 646 IAC 3-11-7; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1940; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-10-7) to the Department of Workforce Development (646 IAC 3-11-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.

**646 IAC 3-11-8 Extension of interstate benefit payments to include claims taken in and for Canada**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 8. This rule shall apply in all its provisions to claims taken in and for Canada. (*Department of Workforce Development; 646 IAC 3-11-8; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1940; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-10-8) to the Department of Workforce Development (646 IAC 3-11-8) by P.L.105-1994, SECTION 5, effective July 1, 1994.

**Rule 12. Appellate Procedure**

**646 IAC 3-12-1 Request for hearing before administrative law judge; statement of contention; notice of hearing**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

---

## INDIANA EMPLOYMENT SECURITY ACT; ADMINISTRATION

---

Sec. 1. (a) Any interested party in the claim of an employee shall be entitled to a hearing before an administrative law judge relative to the merits of the claim.

(b) "Interested party" means the following:

(1) Any claimant for benefits.

(2) Any employer whose account may be affected by the adjudication of the claim.

(3) Any employer in the claimant's base period.

(4) Any employer who has made an offer of work to the claimant or to whose employment claimant has been furnished a referral.

(5) The claimant's last or separating employer.

(c) A party appealing from a decision or order of a deputy shall file its appeal with the department at the office where the original claim was filed or directly with the appellate division on the form provided by the department for that purpose. However, the receipt of any document that indicates on its face a desire to appeal and contains the information requested by the form provided by the department shall be treated as being in compliance with this rule.

(d) Upon scheduling a hearing on an appeal, notices of the hearing shall be mailed to the claimant and to the following:

(1) The claimant's last or separating employer.

(2) Each employer who has made an offer of work to the claimant or to whose employment claimant has been furnished a referral.

(3) Each employer who, other than being chargeable with benefits paid or payable to the claimant, has a direct connection with the issue or issues raised by the appeal. If it appears to the administrative law judge that an employer was improperly excluded as an interested party, the administrative law judge may cause that employer to be given notice of the hearing and become a party to the appeal.

*(Department of Workforce Development; Reg 1001; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 941; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 67; filed Oct 25, 1949, 4:20 p.m.: Rules and Regs. 1950, p. 53; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 94; filed Sep 4, 1959, 9:10 a.m.: Rules and Regs. 1960, p. 35; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 50; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1941; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-1) to the Department of Workforce Development (646 IAC 3-12-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

### **646 IAC 3-12-2 Disqualification of administrative law judge**

Authority: IC 22-4.1-2-3

Affected: IC 22-4-17-15; IC 22-4.1

Sec. 2. An administrative law judge shall abide by and follow IC 22-4-17-15 to ensure the appearance of impartiality. Challenges to the impartiality of an administrative law judge shall be heard and decided by the review board. *(Department of Workforce Development; Reg 1002; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 942; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1941; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-2) to the Department of Workforce Development (646 IAC 3-12-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

### **646 IAC 3-12-3 Conduct of hearings before administrative law judge**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 3. (a) All hearings held before an administrative law judge shall be held at the local office serving the claimant's last employer unless otherwise directed by the executive director. Where the claimant's residence is at a considerable distance from the place of last employment, the claimant shall be given a fair opportunity to present his evidence at a continued hearing to be held at or near the local office nearest his place of residence. Due notice of such continued hearing shall be given to the interested parties.

(b) All hearings shall be conducted informally in order to determine the substantial rights of the parties. The parties may present evidence as the administrative law judge deems necessary for determining the substantial rights of the parties. The parties to the appeal may appear in person, by attorney, or duly authorized agent or representative, under section 12 of this rule, and shall

---

## INDIANA EMPLOYMENT SECURITY ACT; ADMINISTRATION

---

have the right to examine their own witnesses, present evidence, and cross-examine witnesses of the opposing party. Any administrative law judge shall have the right to examine all witnesses and may require the parties to produce any available evidence he may deem necessary for proper determination of the case. Where either party fails to appear or where either party is not represented by an attorney or duly authorized agent, it shall be the duty of the administrative law judge to examine the party's witnesses, and to cross-examine all witnesses of the other party, in order to ensure complete presentation of the case. In general, rules of evidence and procedure for the trial of civil causes shall govern proceedings before an administrative law judge or the review board, but not to an extent as to obstruct or prevent a full presentation of fact or to jeopardize the rights of any interested party. No improper conduct shall be permitted during the progress of the hearing.

(c) When an employer or claimant is not present at any hearing before an administrative law judge or the review board but is represented by an agent or representative, the administrative law judge or the review board shall require the agent or representative to produce proof in writing signed by the claimant or employer giving the agent or representative authority to so appear for and represent that party.

(d) In general, hearsay evidence shall not be considered, but the administrative law judge shall consider all hearsay evidence as would be admissible under common law and statutory rules of evidence of courts in this state. Hearsay evidence which is not subject to a common law or statutory exception with respect to admissibility may be admitted but shall not be entitled to the same weight in reaching a decision as is direct testimony. Hearsay evidence properly objected to and not falling within a recognized exception and admitted into the record shall not form the sole basis for a decision by the administrative law judge or review board. (*Department of Workforce Development; Reg 1003; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 942; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 67; filed Apr 5, 1978, 10:23 a.m.: Rules and Regs. 1979, p. 76; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1941; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2596; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-3) to the Department of Workforce Development (646 IAC 3-12-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-12-4 Continuances**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 4. (a) The administrative law judge or the review board may continue any hearing upon its own motion or upon written application of any party to the appeal. The written application must be received not later than three (3) days before the date of the hearing. An application for a continuance of a hearing pending before an administrative law judge shall be made to the administrative law judge. If the administrative law judge is unavailable, then the application shall be made to the appeals supervisor. An application for continuance of a hearing pending before the review board shall be made to the chairman of the review board.

(b) If the party who has requested the appeal fails to appear at an administrative law judge hearing, after having received due notice, the administrative law judge may, in his discretion, dismiss the appeal and the determination from which the appeal was requested shall be deemed final unless the appeal is reinstated as provided.

(c) The review board may, in its discretion, dismiss any appeal which in its judgment has been abandoned by all interested parties, and the decision from which the appeal was taken shall be deemed final unless the appeal is reinstated as provided. No appeal shall be dismissed as abandoned if any of the interested parties appears in person or by representative at the review board hearing and refuses his consent to the dismissal.

(d) An appealing party shall be deemed to have abandoned his or her appeal to the review board if neither the party nor his or her representative personally appears at the time and place fixed for the review board hearing; except that in a proceeding before the review board to review a decision of an administrative law judge, the party appealing, or any other interested party, may, in lieu of personal appearance or representation, submit to the review board, not later than three (3) days prior to the date set for a hearing, his or her written request that the appeal be heard and decided upon the evidence in the record made before the administrative law judge.

(e) If a party failing to appear at an administrative law judge hearing shall apply within seven (7) days from the date of mailing of the decision or notice of disposition and show good cause why the case should be reinstated, the same shall be reinstated. No case shall be reinstated more than once. (*Department of Workforce Development; Reg 1004; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 943; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 69; filed Sep 5, 1952, 1:40 p.m.: Rules and Regs. 1953, p. 108; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 51; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1942; readopted filed Aug*

---

## INDIANA EMPLOYMENT SECURITY ACT; ADMINISTRATION

---

31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-4) to the Department of Workforce Development (646 IAC 3-12-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-12-5 Withdrawal from appeal; reinstatement petition**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 5. Any party appealing the initial determination of a deputy or a decision of the administrative law judge may withdraw the appeal at any time prior to the hearing by notice in writing, and the decision of the deputy or administrative law judge shall become final and conclusive as against the party withdrawing the appeal unless within seven (7) days after the date of withdrawal a petition in writing for reinstatement is filed. If the petition is timely filed, the appeal shall be reinstated. However, no appeal shall be reinstated more than once. (*Department of Workforce Development; Reg 1005; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 944; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1943; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-5) to the Department of Workforce Development (646 IAC 3-12-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-12-6 Decision of administrative law judge**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 6. The decision of the administrative law judge shall contain conclusions of law supported by specific findings of fact. The decision shall be in writing and shall be signed by the administrative law judge. Copies shall be sent to the parties named, their representatives or attorneys in the appeal, and to the claim holding office. (*Department of Workforce Development; Reg 1006; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 944; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1943; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-6) to the Department of Workforce Development (646 IAC 3-12-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-12-7 Request for appeal to review board**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 7. Within eighteen (18) days after the date of mailing the decision of the administrative law judge, the adversely affected party may appeal to the review board. The appeal to the review board shall be filed at the claim holding local office or administrative office, on the form provided by the department. However, the receipt of any document that indicates on its face a desire to appeal and contains the information requested by the form provided by the department shall be treated as being in compliance with this rule. The review board may grant or deny a request for hearing and shall immediately notify all parties in writing. If a hearing is granted, the review board shall notify the parties in writing of the hearing at least ten (10) days prior to the date of the hearing. (*Department of Workforce Development; Reg 1007; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 944; filed Oct 25, 1949, 4:20 p.m.: Rules and Regs. 1950, p. 54; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 52; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1943; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2597; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-7) to the Department of Workforce Development (646 IAC 3-12-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-12-8 Conduct of hearing before review board**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 8. (a) Unless otherwise directed by the review board, all hearings before the review board shall be conducted in the office of the review board in the city of Indianapolis, Indiana.

(b) Each hearing before the review board shall be confined to the evidence submitted before the administrative law judge

unless it is an original hearing. Provided, however, the review board may hear or procure additional evidence upon its own motion, or upon written application of either party, and for good cause shown, together with a showing of good reason why such additional evidence was not procured and introduced at the hearing before the administrative law judge. An application for leave to introduce additional evidence made by either party shall set forth the names of the witnesses whose testimony will be offered and the facts to which they are expected to testify. If the new evidence is documentary, then a copy of the document proposed to be introduced shall accompany the application. Such application, if made by the appellant, must be presented at the time the request for hearing is filed. No additional evidence shall be taken except after notice is issued by the review board to all parties to such appeal giving each party an opportunity to rebut the additional evidence. The notice shall designate the time when and place at which additional evidence will be received and shall set forth the names of the witnesses whose testimony will be heard, together with a summary of the facts about which they are expected to testify, and shall include a copy of any document offered as additional evidence. It is further provided, however, that if all parties to an appeal are present at a hearing at which the review board upon its own motion determines to take additional evidence and the parties voluntarily waive their right of notice of the taking of additional evidence, the review board in its own discretion may proceed in the taking of additional evidence.

(c) The review board may remand any proceeding to an administrative law judge for the hearing of additional evidence under the same conditions and after like notice as is provided for the hearing of additional evidence by the review board.

(d) In the hearing of an appeal, the review board may limit the parties to oral argument, or the filing of written argument, or both. After notice to all parties, any party to any proceeding in which additional evidence is taken may present material evidence relative to the question upon which the review board has authorized or directed the taking of additional evidence, and evidence in rebuttal also may be introduced.

(e) The proceeding of any claim before an administrative law judge ordered by the review board to be removed until it shall be presented, heard, and decided by the review board in the manner prescribed for the hearing of claims before an administrative law judge. (*Department of Workforce Development; Reg 1008; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 945; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 70; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1943; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-8) to the Department of Workforce Development (646 IAC 3-12-8) by P.L.105-1994, SECTION 5, effective July 1, 1994.

#### **646 IAC 3-12-9 Decision of review board**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 9. (a) The review board shall, as promptly as possible, issue a decision with conclusions of law supported by specific findings of fact. The decision shall be in writing and shall be signed by the members of the review board who heard the appeal.

(b) If a decision of the review board is not unanimous, the decision of the majority shall control, but the dissenting member may file an opinion.

(c) Copies of the decision, together with any dissenting opinion, shall be mailed to the parties, the parties' representatives or attorneys, and the claim holding office.

(d) A decision of the review board which reverses, in whole or in part, the decision of the administrative law judge shall not incorporate by reference or restatement, in whole, the findings of the administrative law judge, but rather shall contain its own findings and conclusions. (*Department of Workforce Development; Reg 1009; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 945; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1944; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-9) to the Department of Workforce Development (646 IAC 3-12-9) by P.L.105-1994, SECTION 5, effective July 1, 1994.

#### **646 IAC 3-12-10 Witnesses; subpoena; fees; limitation**

Authority: IC 22-4.1-2-3

Affected: IC 22-4-17-10; IC 22-4.1

Sec. 10. (a) Whenever the attendance of witnesses or the production of documents or other evidence is desired by any party to the hearing, a request for a subpoena must be filled out, signed by the party, and filed with the deputy where the claim was filed. The request must be filed in time for the subpoena to be issued and served prior to the time and date of the hearing.

---

## INDIANA EMPLOYMENT SECURITY ACT; ADMINISTRATION

---

(b) Unless directed to issue by a member of the review board or an administrative law judge, or the deputy, a subpoena shall be issued only upon a showing of necessity by the party applying for the subpoena. The request for subpoena must contain the name and address of the individual being subpoenaed and a description of the document, record, or thing to be produced.

(c) Witnesses subpoenaed for any hearing before an administrative law judge or the review board shall receive the sum provided in this article provided for employees of the state for per diem fees, for each day their attendance is required in any hearing or proceeding pending before an administrative law judge or the review board and shall, in addition, receive the sum provided in this article for employees for each mile necessarily traveled in going to and returning from hearings from their residence, as provided under IC 22-4-17-10.

(d) Witnesses shall claim their fees and mileage by executing and filing forms provided by the department within fifteen (15) days after the date of the hearing which they attended. If not claimed within this time, fees will not be allowed. No fees or mileage shall be allowed any witnesses not subpoenaed by the review board, administrative law judge, or deputy.

(e) The review board or administrative law judge may refuse to hear more than three (3) witnesses produced by the same person or party to prove the same fact or facts.

(f) If any party requests more than three (3) witnesses subpoenaed to prove the same fact or facts, such party shall pay the cost of all such witnesses in excess of three (3).

(g) Subpoenas may be served by any of the following:

(1) A party to the hearing.

(2) The party's representative as specified under section 12 of this rule.

(3) A representative of the department.

(4) The sheriff of the county in which the hearing is to be held.

Any fees for service by the sheriff are the responsibility of the party requesting the subpoena. Subpoenas may be served in any manner specified by the rules governing the trial of civil causes. Subpoenas shall be enforced by the review board in a court of competent jurisdiction as provided for by law. (*Department of Workforce Development; Reg 1010; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 946; filed Apr 10, 1956, 3:10 p.m.: Rules and Regs. 1957, p. 95; filed Jan 17, 1966, 11:50 a.m.: Rules and Regs. 1967, p. 36; filed Mar 28, 1978, 8:57 a.m.: Rules and Regs. 1979, p. 72; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1944; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-10) to the Department of Workforce Development (646 IAC 3-12-10) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-12-11 Representation before administrative law judge or review board**

Authority: IC 22-4.1-2-3

Affected: IC 22-4; IC 22-4.1

Sec. 11. (a) Any employer or employing unit interested in any benefit claim pending before an administrative law judge or the review board may appear:

(1) in person;

(2) by attorney, officer, or member of the firm or its local manager;

(3) by a recognized public accountant; or

(4) by a representative of an unemployment compensation service firm.

(b) An employee may appear:

(1) in person and represent his own interest; or

(2) by attorney, recognized public accountant, or authorized agent of any bona fide labor organization.

(c) In addition, any interested party may be represented by an individual or member of a class of individuals authorized by rule of the Indiana supreme court to represent parties in judicial or quasi-judicial proceedings.

(d) The review board, in its discretion, may refuse to allow any person to represent a party in any proceeding before it, if it finds that this person is or has been guilty of unethical conduct, or has intentionally or repeatedly failed to observe the provisions of IC 22-4, the rules of the review board, or the rules of the unemployment insurance board.

(e) As used in this section, "attorney", means any person duly admitted and entitled to practice law in the state of his or her residence. Any attorney, agent, or accountant may be required to produce proof of his or her authority and qualifications before appearing in any hearing before any administrative law judge or the review board.

(f) Fees charged to claimants for representation before any administrative law judge or the review board shall be in a sum

---

## INDIANA EMPLOYMENT SECURITY ACT; ADMINISTRATION

---

subject to the approval of the review board. Except in unusual cases this fee shall be for a sum not in excess of fifteen percent (15%) of the unpaid balance of the claimant's maximum benefit amount. (*Department of Workforce Development; Reg 1012; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 947; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 71; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1945; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-12) to the Department of Workforce Development (646 IAC 3-12-11) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-12-12 Records of decisions**

Authority: IC 22-4.1-2-3

Affected: IC 22-4-17-3; IC 22-4-17-5; IC 22-4.1

Sec. 12. Copies of all decisions of the administrative law judge and of the review board shall be kept on file at the office of the department, Indianapolis, Indiana. These decisions shall not be open to public inspection in a manner as to reveal the names or addresses of the interested parties or their witnesses. (*Department of Workforce Development; Reg 1013; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 948; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1946; filed Aug 1, 1994, 5:00 p.m.: 17 IR 2859; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-13) to the Department of Workforce Development (646 IAC 3-12-12) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-12-13 Pleadings; forms**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 13. Unless otherwise provided, all forms, pleadings, and papers in connection with disputed claims shall be filed with the deputy at the office of the department where the claim was filed. All legal motions filed by attorneys or representatives shall be served on all interested parties with a certificate of service. (*Department of Workforce Development; Reg 1014; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 948; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1946; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-14) to the Department of Workforce Development (646 IAC 3-12-13) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-12-14 Cause number; subsequent pleadings**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 14. All claims pending before an administrative law judge or the review board shall be promptly assigned a cause number and an employer account number. (*Department of Workforce Development; Reg 1015; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 948; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1946; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-15) to the Department of Workforce Development (646 IAC 3-12-14) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-12-15 Service of notice**

Authority: IC 22-4.1-2-3

Affected: IC 22-4-17-14; IC 22-4.1

Sec. 15. Notice of all hearings or proceedings before an administrative law judge or the review board, unless otherwise directed by statute, shall be given by mail, and the proof of the mailing of any notice shall be prima facie proof of the service. Notices and the time period which commences with the service of notices under the appellate regulations shall comply with IC 22-4-17-14. (*Department of Workforce Development; Reg 1016; filed Apr 17, 1947, 4:30 p.m.: Rules and Regs. 1948, p. 237; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 72; filed Oct 25, 1949, 4:20 p.m.: Rules and Regs. 1950, p. 54; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1946; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-16) to the Department of Workforce Development (646 IAC 3-12-15) by P.L.105-1994, SECTION

5, effective July 1, 1994.

**646 IAC 3-12-16 Depositions; translations**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 16. (a) In all hearings, proof may be made by oral testimony, by documentary exhibits, or by depositions when the convenience of the witnesses or the parties so requires. Depositions shall be taken in the manner and after notice required by statute for taking depositions in civil cases.

(b) No paper or document written in any foreign language shall be introduced in evidence unless it is accompanied by a correct English translation, with satisfactory proof that the translation is a correct translation of the original. Testimony in a language other than English or by the hearing impaired shall be interpreted by an interpreter of either the witness' or the department's choice approved by the administrative law judge or review board. The interpreter is subject to the same oath or affirmation as is the witness. (*Department of Workforce Development; Reg 1017; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 949; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1946; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-17) to the Department of Workforce Development (646 IAC 3-12-16) by P.L.105-1994, SECTION 5, effective July 1, 1994.

**646 IAC 3-12-17 Docket; order book**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 17. The review board and administrative law judge shall keep a case docket and an order book of all claims pending before the review board and administrative law judge. All cases shall be entered of record in the appropriate docket at the time and in the order in which they are filed, and each case shall be numbered in the order in which it is filed. The case docket of claims and cases pending shall show the following:

- (1) The names of the designated employer and employee.
- (2) The cause number.
- (3) The date of filing.
- (4) The date of issuing of notice of hearing.
- (5) The date of receipt of acknowledgement of the service of such notice.
- (6) The dates of all hearings in connection with such claims.

The order book of the review board and administrative law judge shall be properly indexed and shall show all entries, orders, findings, and final decisions of the review board and administrative law judge. The case docket and order book may be kept by the review board and administrative law judge in any suitable media in accordance with the Indiana rules of procedure. (*Department of Workforce Development; Reg 1018; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 949; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 72; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1947; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-18) to the Department of Workforce Development (646 IAC 3-12-17) by P.L.105-1994, SECTION 5, effective July 1, 1994.

**646 IAC 3-12-18 Convening review board; quorum; amendment of rules of procedure**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 18. (a) The review board shall convene upon the call of the chairman, for consultation, and for the disposition of matters pending before the review board. Two (2) members of the review board shall constitute a quorum for the transaction of any business and the performance of any act required or authorized to be transacted or performed by the review board.

(b) The chairman, when incapacitated and with the consent of the appointing authority, may designate an acting chairman in his absence. (*Department of Workforce Development; Reg 1019; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 950; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1947; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana

---

## INDIANA EMPLOYMENT SECURITY ACT; ADMINISTRATION

---

*Unemployment Insurance Board (640 IAC 1-11-19) to the Department of Workforce Development (646 IAC 3-12-18) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

### **646 IAC 3-12-19 Recording hearings; transcripts**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 19. All evidence introduced at any hearing before the review board or an administrative law judge shall be preserved, and all oral evidence shall be recorded, but it shall not be necessary to transcribe the same unless further proceedings are had in which the evidence shall be in issue or be required for a proper determination of the proceeding. A transcript will be prepared only when ordered by the review board for its use or as required for judicial proceedings. (*Department of Workforce Development; Reg 1020; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 950; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1947; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-20) to the Department of Workforce Development (646 IAC 3-12-19) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-12-20 Transfer of hearing to unemployment insurance board**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 20. Where a claim pending before the review board is transferred to the unemployment insurance board for determination, the hearing shall be held before and decided by the full board. Rules governing hearings before the unemployment insurance board shall be the same as those applicable to hearings before the review board. (*Department of Workforce Development; Reg 1022; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 950; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 72; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 179; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1947; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-22) to the Department of Workforce Development (646 IAC 3-12-20) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-12-21 Telephone hearings**

Authority: IC 22-4.1-2-3

Affected: IC 22-4-17-8.5; IC 22-4.1

Sec. 21. (a) A telephone hearing may be conducted at the initiation of either the review board or an administrative law judge or upon the request of an interested party.

(b) The review board and an administrative law judge may, at their discretion, initiate and conduct a telephone hearing under IC 22-4-17-8.5.

(c) The procedure for a telephone hearing requested by an interested party shall be as follows:

(1) Any party to an appeal may request a telephone hearing by submitting, in writing, the reasons for the request to the administrative law judge or review board. The request must be received by the review board or the administrative law judge three (3) days before the scheduled inperson hearing.

(2) After mailing of a notice of a telephone hearing or after mailing of a notice of a request for a telephone hearing, the claimant or employer has five (5) business days in which to file a written objection to the telephone hearing. Any interested party may object to a request by another party for a telephone hearing and, if both interested parties are located in Indiana and the nonmoving party objects to the request for a telephone hearing, then the review board and administrative law judge is precluded from holding a hearing by telephone.

(3) The review board or administrative law judge shall grant or deny requests for telephone hearings under IC 22-4-17-8.5 and immediately notify the interested parties of their decision.

(d) The notice of a telephone hearing shall contain the following:

(1) That parties have the right to object to a telephone hearing.

(2) The circumstances under which the telephone hearing will be conducted.

(3) Instructions as to how the telephone hearing will be conducted.

(4) Other rights of the parties.

(e) All hearings before an administrative law judge shall be held at the local office having hearing facilities nearest the employer who is an interested party. The location of the employer will be determined by the claimant's last work site or the office site of the claimant's immediate supervisor and as further defined by this rule.

(f) A witness for a telephone hearing must be present at the local office in Indiana or at the location of the party participating by telephone as indicated in the hearing notice or request for telephone hearing. The review board or administrative law judge at the beginning of the hearing shall advise all participants that the proceedings are being recorded. The review board or administrative law judge shall permit any party a reasonable opportunity to question any witness testifying via telephone for the purpose of verifying the identity of that witness. Telephone hearings shall be subject to the general rules and regulations governing inperson hearings. In order for documentary evidence to be included in the record in a telephone hearing, it must have been delivered to the review board, administrative law judge, and other interested parties at least five (5) business days prior to the telephone hearing. *(Department of Workforce Development; 646 IAC 3-12-21; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1948; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2597; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-23) to the Department of Workforce Development (646 IAC 3-12-21) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

#### **646 IAC 3-12-22 Job training and counseling**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 22. (a) The department shall provide job counseling or training, as defined in subsection (b), to an individual who remains unemployed for at least four (4) weeks. An unemployed individual who is ineligible to receive benefits may be entitled to job counseling and training. The manner and duration of the counseling and training to be provided shall be determined by the unemployment insurance board.

(b) As used in this section, "counseling" includes those activities which assist an individual in gaining self-knowledge, adapting emotionally and financially to his or her current situation, and establishing a course of action leading to employment and financial independence.

(c) As used in this section, "training" includes those activities which enhance the skills an individual needs to secure and maintain employment.

(d) Counseling and training activities may include work orientation, development of basic and master skills evaluations, school to career programs, development of performance standards and proficiencies, and other activities as directed by the unemployment insurance board.

(e) Counseling and training services may be offered either on an individual or group basis depending on the program structure of the service delivery area and approval by the department.

(f) The department shall be responsible for identifying and referring unemployed workers to appropriate counseling and training programs and tracking unemployment insurance claimants who are referred to and receive counseling and training services. *(Department of Workforce Development; 646 IAC 3-12-22; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1948; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-11-24) to the Department of Workforce Development (646 IAC 3-12-22) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

### **Rule 13. Reciprocal Arrangements**

#### **646 IAC 3-13-1 Reciprocal coverage of multistate workers**

Authority: IC 22-4.1-2-3

Affected: IC 22-4-22-1; IC 22-4-22-2; IC 22-4.1

Sec. 1. This rule governs the department in its administrative cooperation with other states subscribing to the interstate reciprocal coverage arrangement, hereinafter referred to as the arrangement. *(Department of Workforce Development; Reg 1101; filed Dec 13, 1945, 10:40 a.m.: Rules and Regs. 1947, p. 951; filed Jan 17, 1966, 11:50 a.m.: Rules and Regs. 1967, p. 37; filed Dec 6, 1966, 11:15 a.m.: Rules and Regs. 1967, p. 52; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1949; filed Aug 1, 1994, 5:00 p.m.: 17*

---

## INDIANA EMPLOYMENT SECURITY ACT; ADMINISTRATION

---

*IR 2859; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-12-1) to the Department of Workforce Development (646 IAC 3-13-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

### **646 IAC 3-13-2 Definitions**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Agency" means any officer, board, commission, or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

(c) "Customarily performed services by an individual in more than one (1) jurisdiction" means services performed in more than one (1) jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one (1) jurisdiction or if such services are required or expected to be performed in more than one (1) jurisdiction under the election.

(d) "Interested jurisdiction" means any participating jurisdiction to which an election submitted under this rule is sent for its approval.

(e) "Interested agency" means the agency of jurisdiction.

(f) "Jurisdiction" means any state of the United States, the District of Columbia, Canada, or, with respect to the federal government, the coverage of any federal unemployment compensation law.

(g) "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated. *(Department of Workforce Development; 646 IAC 3-13-2; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1950; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-12-2) to the Department of Workforce Development (646 IAC 3-13-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

### **646 IAC 3-13-3 Submission and approval of coverage elections under the interstate reciprocal coverage arrangement**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 3. (a) Any employing unit may file an election to cover under the law of a single participating jurisdiction all of the services performed for him by an individual who customarily works for him in more than one (1) participating jurisdiction. An election may be filed, with respect to an individual, with any participating jurisdiction in which:

(1) any part of the individual's services are performed;

(2) the individual has his or her residence; or

(3) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(b) The agency of the elected jurisdiction shall initially approve or disapprove the election. If the agency approves the election, it shall forward a copy to the agency of each other participating jurisdiction specified, under whose unemployment compensation law the individual or individuals in question might, in the absence of the elections, be covered. Each interested agency shall approve or disapprove the election, as promptly as practicable, and shall notify the agency of the elected jurisdiction accordingly.

(c) In case its law so requires, any interested agency may, before taking action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

(d) If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons.

(e) An election shall take effect as to the elected jurisdiction only if approved by its agency and by one (1) or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by the agency.

(f) In case any election is approved only in part, or is disapproved by some of the agencies, the electing employing unit may withdraw its election within ten (10) days after being notified of this action. *(Department of Workforce Development; 646 IAC 3-13-3; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1950; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-12-3) to the Department of Workforce Development (646 IAC 3-13-3) by*

---

## INDIANA EMPLOYMENT SECURITY ACT; ADMINISTRATION

---

*P.L.105-1994, SECTION 5, effective July 1, 1994.*

### **646 IAC 3-13-4 Effective period of elections**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 4. (a) An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, the earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(b) The application of an election to any individual under this rule shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one (1) participating jurisdiction. Such termination shall be effective at the close of the calendar quarter in which notice of the finding is mailed to all parties affected.

(c) Except as provided in subsection (b), each election approved shall remain in effect through the close of the calendar year in which it is submitted until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(d) Whenever an election under this rule ceases to apply to any individual under subsection (b) or (c), the electing unit shall notify the affected individual accordingly. (*Department of Workforce Development; 646 IAC 3-13-4; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1951; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-12-4) to the Department of Workforce Development (646 IAC 3-13-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-13-5 Reports and notices by the electing unit**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 5. (a) The electing unit shall promptly notify each individual affected by its approved election and shall furnish the elected agency a copy of the notice.

(b) Whenever an individual covered by an election under this rule is separated from employment, the electing unit shall notify the individual as to the jurisdiction under whose unemployment compensation law the services have been covered. If, at the time of termination, the individual is not located in the elected jurisdiction, the electing unit shall notify the individual as to the procedure for filing interstate benefit claims.

(c) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one (1) participating jurisdiction or where a change in the work assigned to an individual requires him or her to perform services in a new participating jurisdiction. (*Department of Workforce Development; 646 IAC 3-13-5; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1951; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-12-5) to the Department of Workforce Development (646 IAC 3-13-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **646 IAC 3-13-6 Approval of reciprocal coverage elections**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 6. The Indiana unemployment insurance board delegates to the director of the department authority to approve or disapprove reciprocal coverage elections in accordance with this rule. (*Department of Workforce Development; 646 IAC 3-13-6; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1952; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-12-6) to the Department of Workforce Development (646 IAC 3-13-6) by

*P.L.105-1994, SECTION 5, effective July 1, 1994.*

**Rule 14. Liability Referee Hearings**

**646 IAC 3-14-1 Protest of benefit charges; hearings and decisions by liability administrative law judge**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 1. (a) Any protest of charges made to an employer's experience account as reflected by the monthly statement issued by the department must be made in writing within fifteen (15) days after it is mailed to the employer's last known address. Unless protest is filed within the provided time, the records of the department shall be considered to be correct. The protesting employer may file either on the form provided by the department for that purpose, or any other document that shows a clear desire to protest charges. In any case, the protest must be signed by the employer. The protest may be filed either at a local office of the department or at the administrative office. When filed with the liability administrative law judge, a time, place, and date of hearing shall be set by the liability administrative law judge. The hearing shall be held only after not less than ten (10) days following the mailing of the notice of hearing. The protest filed by the employer shall contain the following:

- (1) The name and Social Security number of the claimant whose benefits, as alleged to have been charged, are protested.
- (2) The date of the receipt by the employer of the statement of benefit charges to which the protest is directed.
- (3) The week for which benefits were paid and the amount of each weekly payment, with respect to the charging of the benefits the protest is directed.
- (4) The cause or grounds for the protest and the particular fact relied upon to support the protest.

(b) By permission of the liability administrative law judge, the employer may amend its protest at any time prior to or during the course of the hearing. The liability hearing will be confined to the issues raised by the employer's protest, and the liability administrative law judge shall have no jurisdiction to determine the benefit rights of any individual to whom benefits have been paid as the result of a final determination.

(c) When a written protest to charges or a written request for relief from charges is filed by an employer by reason of benefits paid to any individual, and when the protest or request for relief is based upon a claim that the employer was not notified of the filing of the individual's claim for benefits and of the employer's liability for charges to its experience account by reason of benefits paid to that individual, then the liability administrative law judge shall hear and determine the protest or request after notice under subsections (a) through (b).

(d) The liability administrative law judge shall determine that the employer's experience account shall be relieved of charges by reason of benefits paid to an individual only when the following has been determined by the liability administrative law judge:

- (1) The individual was ineligible for benefits paid, and that the individual's eligibility for benefits could have been and would have been protested by the employer if due notice had been given the employer of the filing of the individual's claim and the employer's liability for charges to its experience account by reason of benefits paid that individual under the claim.
- (2) The employer, if it had been given due notice of the filing of a claim by an individual and of the employer's liability for charges to its experience account by reason of benefits paid under the claim to the individual, could have and would have protested that individual's eligibility for benefits and could have been and would have been able to establish the ineligibility for benefits of that individual, or any disqualification for or reduction in such benefits.

(e) No employer's account shall be relieved of charges for benefits paid to any individual by reason of ineligibility claimed because of any prospective action which might have been taken by the employer, if the employer had received due notice of the filing of the claim and his or her liability for charges to his or her experience account for all or any portion of benefits paid thereunder, but relief from the charges to his or her experience account shall be granted to an employer only if the employee was ineligible for benefits or subject to a disqualification, by reason of facts which actually existed or events which actually occurred. For example, Claimant A filed a claim for benefits and benefits paid him or her were charged to experience account of Employer B as the only employer from whom claimant had earnings in his or her base period. Employer B filed a protest and request for relief of his or her account from charges for the benefits paid. Employer B claimed he or she did not receive notice of benefit liability and did not know of the filing of A's claim, nor that said Employer B's account was to be charged with benefits paid to Claimant A. The employer further claimed he or she would have made an offer of suitable work to Claimant A if due notice of filing of the claim had been duly given him or her.

(f) The employer's account shall not be relieved of charges because of failure to give the employer notice of the filing of the claim, for the claimant was not ineligible for benefits or subject to a disqualification by reason of facts which actually existed or events which actually occurred at or prior to the time of filing his or her claim. When an employer has filed a written protest to or request for relief from charges to his or her experience account for benefits which may be or have been paid to a claimant subsequent to the filing by the employer of a written protest to the payment thereof or to the eligibility for benefits of the claimant, together with a request in writing for a hearing thereon, then, and in these cases, the liability administrative law judge shall have no further jurisdiction of the proceeding until after the hearing has been held by the appellate section of the department upon the employer's original protest. (*Department of Workforce Development; Sec II, Reg 1201; filed Mar 31, 1948, 9:55 a.m.: Rules and Regs. 1949, p. 72; filed Jul 13, 1972, 11:00 a.m.: Rules and Regs. 1973, p. 179; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1952; errata filed Jul 16, 1992, 2:00 p.m.: 15 IR 2597; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-13-1) to the Department of Workforce Development (646 IAC 3-14-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

### **Rule 15. Seasonal Employment**

#### **646 IAC 3-15-1 Seasonal employer; determination by department**

Authority: IC 22-4.1-2-3

Affected: IC 22-4-7-3; IC 22-4.1

Sec. 1. (a) An employer in order to be considered a seasonal employer as defined in IC 22-4-7-3 must make application on prescribed forms attesting to the seasonal nature of the business or a portion or portions of an employer's business.

(b) Because of the seasonal nature of the business or because of climatic conditions, the operation of the business or portions thereof is during a regularly recurring period or periods of less than twenty-six (26) weeks in a calendar year. The department shall make a seasonal determination within ninety (90) days after the filing of an application by an employer. (*Department of Workforce Development; Reg 1301; filed Oct 19, 1983, 10:25 a.m.: 7 IR 47; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1953; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-1) to the Department of Workforce Development (646 IAC 3-15-1) by P.L.105-1994, SECTION 5, effective July 1, 1994.

#### **646 IAC 3-15-2 Seasonal employer; appeal to department**

Authority: IC 22-4.1-2-3

Affected: IC 22-4-32; IC 22-4.1

Sec. 2. Any interested party may file an appeal to a determination regarding an approval or disapproval of an election to become a seasonal employer. The appeal must be filed within fifteen (15) days after the determination to obtain review in accordance with IC 22-4-32. (*Department of Workforce Development; Reg 1302; filed Oct 19, 1983, 10:25 a.m.: 7 IR 47; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1953; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-2) to the Department of Workforce Development (646 IAC 3-15-2) by P.L.105-1994, SECTION 5, effective July 1, 1994.

#### **646 IAC 3-15-3 Seasonal employer; portion of business considered seasonal**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 3. An employer may be a seasonal employer with respect to a portion of its business only if that portion, under the usual and customary practice in the industry, is identifiable as a functionally distinct operation. For example, a municipally owned golf course in operation twenty (20) weeks per year would be considered a portion of the operation of the municipality. An application would be required to consider this portion as a "seasonal employer". (*Department of Workforce Development; Reg 1303; filed Oct 19, 1983, 10:25 am: 7 IR 47; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-3) to the Department of Workforce Development (646 IAC 3-15-3) by P.L.105-1994, SECTION 5, effective July 1, 1994.

**646 IAC 3-15-4 Seasonal workers; definition; requirements**

Authority: IC 22-4.1-2-3

Affected: IC 22-4-8-4; IC 22-4.1

Sec. 4. (a) Seasonal employment as defined in IC 22-4-8-4 means service performed for an approved seasonal employer during the approved seasonal period of less than twenty-six (26) weeks.

(b) A seasonal worker is an individual employed by an approved seasonal employer who is employed for less than twenty-six (26) weeks in approved seasonal employment.

(c) An approved seasonal employer will be required to submit information on department forms detailing the number of positions classified as seasonal within the approved portion or portions of such business. Also included will be the opening and closing dates of each seasonal operation. *(Department of Workforce Development; Reg 1304; filed Oct 19, 1983, 10:25 a.m.: 7 IR 47; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1953; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-4) to the Department of Workforce Development (646 IAC 3-15-4) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

**646 IAC 3-15-5 Seasonal workers; notification to employee of employment limitations**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 5. An approved seasonal employer must notify the seasonal employee in writing of the following:

(1) The employee has been hired for a specific temporary seasonal period as determined by the department.

(2) The employee is performing services in seasonal employment for an approved seasonal employer.

(3) Employment is limited to the beginning and ending dates of the seasonal period as determined and approved by the department.

*(Department of Workforce Development; Reg 1305; filed Oct 19, 1983, 10:25 a.m.: 7 IR 47; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1954; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-5) to the Department of Workforce Development (646 IAC 3-15-5) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

**646 IAC 3-15-6 Seasonal employer; seasonal determination; effective date**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 6. Upon department approval the effective date of a seasonal determination is the first day of the calendar quarter beginning after the date of the seasonal determination. *(Department of Workforce Development; Reg 1306; filed Oct 19, 1983, 10:25 a.m.: 7 IR 47; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1954; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-6) to the Department of Workforce Development (646 IAC 3-15-6) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

**646 IAC 3-15-7 Seasonal employer; reporting wages**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 7. Seasonal employers are required to keep an accurate account of wages paid to seasonal workers within the seasonal period as determined by the department. The department will furnish seasonal employers the special wage reporting forms with coding for seasonal employees. Wages will continue to be reported on a quarterly basis. *(Department of Workforce Development; Reg 1307; filed Oct 19, 1983, 10:25 a.m.: 7 IR 48; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1954; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-7) to the Department of Workforce Development (646 IAC 3-15-7) by P.L.105-1994, SECTION 5, effective July 1, 1994.*

**646 IAC 3-15-8 Claims for benefits; filing period**

Authority: IC 22-4.1-2-3

Affected: IC 22-4-8-4; IC 22-4.1

Sec. 8. For new weeks of unemployment after October 1, 1983, benefits may be paid to individuals on the basis of service performed in seasonal employment as defined in IC 22-4-8-4 only if a claim is filed within the operating period of approved seasonal employment. If the claim is filed outside the operating period of seasonal employment, benefits may be paid on the basis of non-seasonal wages only. (*Department of Workforce Development; Reg 1308; filed Oct 19, 1983, 10:25 am: 7 IR 48; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-8) to the Department of Workforce Development (646 IAC 3-15-8) by P.L.105-1994, SECTION 5, effective July 1, 1994.

**646 IAC 3-15-9 Seasonal operations; loss of seasonal status**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 9. A seasonal employer shall give written notice to the department when the seasonal operation exceeds twenty-five (25) weeks in a calendar year; such notice shall be filed within thirty (30) days after completion of the twenty-sixth week of operation. The seasonal employer shall automatically lose its seasonal status for that portion of its operation at the end of the calendar quarter, and wages paid to individuals in that portion of the employer's operation will be useable as regular wages to establish claims. (*Department of Workforce Development; Reg 1309; filed Oct 19, 1983, 10:25 a.m.: 7 IR 48; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1954; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-9) to the Department of Workforce Development (646 IAC 3-15-9) by P.L.105-1994, SECTION 5, effective July 1, 1994.

**646 IAC 3-15-10 Reinstatement of seasonal status**

Authority: IC 22-4.1-2-3

Affected: IC 22-4.1

Sec. 10. An employer who has lost his or her designation as a seasonal employer and who wishes reinstatement as a seasonal employer may make application with the department for reinstatement in any calendar year subsequent to the year in which its designation as a seasonal employer was revoked. (*Department of Workforce Development; Reg 1310; filed Oct 19, 1983, 10:25 a.m.: 7 IR 48; filed Apr 30, 1992, 5:00 p.m.: 15 IR 1954; readopted filed Aug 31, 2001, 11:25 a.m.: 25 IR 203*) NOTE: Transferred from the Indiana Unemployment Insurance Board (640 IAC 1-14-10) to the Department of Workforce Development (646 IAC 3-15-10) by P.L.105-1994, SECTION 5, effective July 1, 1994.

\*